

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2138

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2022

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 2138 (1R).

As amended by the committee, this bill repeals current law on the regulation of home improvement and home elevation contractors and establishes the New Jersey State Board of Home Improvement and Home Elevation Contractors as the regulating body of these contractors. The bill defines “contractor” to mean an individual providing home improvement or home elevation services, or both types of services, for a corporation, partnership, association, sole proprietorship, and any other form of business organization or entity that enters into a contract with consumers. The definition excludes individuals who own or manage a home improvement or home elevation business but do not perform the contracting services and employees of or individuals contracted by a business entity hired or contracted to sell the contracting services. The bill also clarifies that “home improvement,” as defined, does not include the construction of new residential property.

Additionally, under the bill, the definition of “responsible managing employee” is deleted and “principal home improvement contractor” and “principal home elevation contractor” are established as the licensed contractors who are to oversee the performance of services of a contract if the value of the contract is at least \$120,000 and requires the submittal of more than one subcode. A principal contractor may also practice as a non-principal contractor if a contract for services is agreed to in which the value of services is less than \$120,000 or does not require the submittal of plans with more than one subcode.

The board created in the bill is to have a membership of nine people, including five home improvement contractors, of whom two are to represent a trade association focused on the home improvement industry, one member is to be a licensed construction code official, two members are to represent the public, and one member is to represent the Executive Branch. The home elevation contractor is removed as a member of the board. It is the

entitlement of the board under the bill to retain all funds collected as a result of fees paid for initial licensure and business registration, as well as for the renewal, reactivation, or reinstatement of licenses and registrations. The board may use those funds to reimburse members for expenses incurred. The board is to assemble within 30 days of the members being appointed. The responsibilities of the board are, in part, to license, on a biennial basis, home improvement and home elevation contractors and register, also on a biennial basis, home improvement and home elevation businesses; develop education requirements for contractors, including principal contractors, and a voluntary examination preparatory course; establish a code of ethics and standards of conduct for contractors; develop standards for continuing education; and promulgate rules and regulations as guidance for contractors.

Under the bill, requirements for licensure as either a home improvement or home elevation contractor include demonstrating, through an attestation as prescribed by the board, completion of either 1) an apprenticeship program registered with or approved by the United States Department of Labor, or a similar program as provided by a trade school or other facility that is accredited by a regional or national accrediting agency recognized by the United States Department of Education, that allows an individual to perform services that prepare the individual for a career in home improvement or home elevation or 2) at least two years of experience performing home improvement services for a home improvement or home elevation contractor for individuals seeking licensure as a home improvement contractor, or two years of experience performing home improvement and home elevation services for a home elevation contractor. An individual may qualify for licensure under the experience option if they can demonstrate at least two years of experience while working as a home improvement or home elevation contractor out-of-State or while working under a home improvement or home elevation contractor in another state. The attestation required in the bill is to include the name of the home improvement or home elevations business for whom the applicant worked if the individual is applying for licensure using the experience option. An individual applying for licensure is also required to pass an exam to test knowledge of home improvement, and home elevation, if applicable.

Home improvement and home elevation businesses are required to register under the bill and are to show proof of general liability insurance, workers' compensation insurance, and financial stability. A business is to also demonstrate the employment of at least one licensed home improvement or home elevation contractor and compliance with applicable tax, business, and other laws in New Jersey.

In the bill, clarifications are made to provisions requiring general liability insurance and workers' compensation insurance to ensure that businesses are aware of needing to meet these requirements and it is not the individual licensed contractors that need to obtain this insurance. A business is to submit to the board a copy of the certificate of a new or replacement general liability or workers' compensation insurance policy in the event the business has a previous policy canceled or changes the previous policy.

The bill requires a business have a bond, letter of credit, or other type of security. If a business has a bond, the bill provides that it must be a compliance bond. The bill delineates the dollar amount of the bond, letter of credit, or other type of security needed by a business depending on the value of the contract in place for a business to provide services. The board can collect penalties from a bond, letter of credit, or security if penalties are assessed against a business.

The bill allows a business to reduce, by half, the dollar amount of a bond, letter of credit, or other security if the business can demonstrate that a senior manager of the business completed a course in financial responsibility and security. The board is granted discretion to require the full dollar amount of the bond, letter of credit, or other security even if a senior manager has completed an aforementioned course, if a business, as demonstrated on an application for registration for renewal, has a claim, or multiple claims, of a certain dollar amount, as determined by the board, made against the bond, letter of credit or other security held by the business. Penalties for the failure to complete a home improvement or home elevation in accordance with a contract are deemed an unlawful practice under the consumer fraud statute. A contractor who commits an unlawful practice may be fined up to \$10,000 for a first offense and up to \$20,000 for a second offense.

Under the bill, if a registered business has only one licensed contractor under its employment who then leaves their employment, the registered business has 60 days to hire a new contractor. Additionally, licensed contractors are to be issued by the board identification badges currently required under New Jersey law. A temporary identification badge in paper is to be issued to a contractor at the same as a license if the processing of the formal badge is not complete when the license is ready for issuance. The bill clarifies that a home improvement or home elevation contractor cannot practice in New Jersey without a license. Additionally, the bill states that any licensed contractor or registered business who advertises or indicates publicly that the individual or business can perform home improvement or home elevation services is subject to the provisions of the bill. The bill also stipulates that businesses are to prominently display in the place of business and in advertisements the registration number of the business.

Exemptions from licensure in the bill apply to various sections, including 1) licensure requirements; 2) the nonrenewal of a license or licensure revocation or suspension; 3) liability insurance and proof of financial stability; 4) criminal penalties; 5) identification badges; 6) licensure display; 7) the grandfathering clause; 8) the application of the law to individuals with places of business outside the State; 9) provisions on the cancellation of a contract; 10) written agreements between county or municipal offices and the board regarding consumer complaints; 11) conversion of licenses from home elevation to home improvement or home improvement to home elevation; and 12) continuing education provisions. Additionally, the bill clarifies that individuals required to be licensed for selling home repair contracts under current law are also exempt if sales are made door-to-door. However, door-to-door sales individuals are to still comply with identification badge requirements, which are required of individuals that make in-person sales to consumers.

Language in the bill also “grandfathers in” certain previously-registered contractors by exempting from licensure individuals currently registered as a home improvement contractor in New Jersey for at least five years and individuals who have at least five years of experience in providing home elevation services who have been registered as home improvement contractors in New Jersey for at least five years or registered as home elevation contractors in New Jersey for at least five years. An individual who is qualified for licensure under the grandfathering clause and can demonstrate previous experience overseeing the performance of services for contracts valued at a minimum of \$120,000 and requiring the submission of multiple subcodes will qualify for licensure as a principal home improvement or principal home elevation contractor.

Language in the bill clarifies that individuals captured in the grandfathering clause of the bill are to be licensed once current registration expires and these individuals can be issued construction permits by a municipality. Further clarification is made to allow municipalities to issue construction permits to single-family homeowners performing plumbing, electrical, or heating, ventilation, and air-conditioning work in the homeowner’s own dwelling. Moreover, the bill states that it does not deny the right of a municipality to inspect a contractor’s work or equipment as is allowed under current law. Language also in current law on the establishment of a public information campaign is included in this bill and states the need to publicize the provisions of the bill to applicable businesses.

The bill requires a written contract to include the name of the principal home improvement or principal home elevation contractor if one is required for the services to be performed. Continuing

education requirements are established in the bill, in which a licensed contractor is to complete no less than six hours of continuing education each biennial renewal period. Among the stipulations is the permission that a continuing education course may be attended in-person or online and that a course in another state or U.S. jurisdiction may qualify for credit if it teaches on a topic approved by the board. Additionally, a licensee who teaches a course may receive double the credit offered to attendees of the course but may only receive that double credit once a biennial renewal period.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) define “contractor” to mean individuals who, along with providing home improvement or home elevation services, or both types, enter into contracts for these services with consumers;

2) allow principal home improvement or principal home elevation contractors to provide home improvement or home elevation services even if it is under a contract valued less than \$120,000 or that does not require the submission of multiple subcodes;

3) allow the board to retain all funds it receives from licensed individuals or registered businesses and to use some of the funds to reimburse board members who incur expenses;

4) provide that the examination preparatory course to be developed by the board is optional;

5) clarify that individuals seeking licensure as a home improvement contractor under two years of experience may gain that experience by working under a home elevation contractor and individuals seeking either licensure as a home improvement or home elevation contractor may obtain the experience as a contractor in another state or U.S. jurisdiction or by working underneath a contractor in another state or U.S. jurisdiction;

6) require a business seeking to register in the State under the bill to include proof of financial stability by demonstrating the business has a compliance bond, letter of credit, or other security prior to registering;

7) remove references to Class A, Class B, and Class C contractors;

8) remove language connecting the board to the process by which a consumer makes a claim against the bond, letter of credit, or other security of a business;

9) add a stipulation that a person in senior management may complete a course in financial responsibility and stability to qualify for a reduced amount of the compliance bond, letter of credit or other security but, even with that completion, a business may still be required to maintain the full dollar amount of the bond, letter of credit, or other security if it is demonstrated on the application for business

registration renewal that a business received a claim, or multiple claims, in a dollar amount as determined by the board, made against its compliance bond, letter of credit, or other security;

10) provide that a temporary badge is to be issued at the same time as a license is issued;

11) add certain additional exemptions to the bill, except the exemption for an identification badge does not apply to individuals who make door-to-door home repair sales pursuant to current law;

12) provide that individuals who qualify for licensure as a home improvement or home elevation contractor based on previous experience will qualify as a principal contractor if the individual demonstrates experience overseeing work valued at a minimum of \$120,000 and requiring the submittal of plans with multiple subcodes;

13) clarify who qualifies for licensure in the provision in the bill allowing municipalities to issue construction permits;

14) provide that continuing education credits may be obtained under certain circumstances in another state or U.S. jurisdiction, in-person or online, and a licensed contractor under the bill may receive double in continuing education credits, once a biennial renewal period, from what attendees of a course receive if the contractor teaches the course;

15) require the board to begin meeting once a majority of members are appointed by the Governor; and

16) make clarifications for grammar and consistency in the bill.